Supreme Court, U. S.
FILED
DEC 26 1978
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

NO. 78-482

THE HON. ROBERT K. SMITH,
JUDGE, ET AL., ETC.,

Petitioners,

vs.

STATE EX REL. DAILY MAIL
PUBLISHING CO., ETC., ET AL.,

Respondents.

THE HON. ROBERT K. SMITH,
JUDGE, ET AL., ETC.,

Petitioners,

vs.

DON MARSH, ET AL., THE
DAILY GAZETTE CO., ETC.,
ET AL.,

Respondents.

BRIEF OF THE AMICI CURIAE

PAUL RAYMOND STONE
Pro Se
And
CHARLES R. GARTEN
Counsel for
Juvenile Defender
Attorney Program
1116-B Kanawha Blvd, E
Charleston, WV 25301

IN THE

SUPREME COURT OF THE UNITED STATES

NO. 78-482

THE HON. ROBERT K. SMITH,
JUDGE, ET AL., ETC.,
Petitioners,

vs.

STATE EX REL. DAILY MAIL
PUBLISHING CO., ETC., ET AL.,
Respondents.

THE HON. ROBERT K. SMITH,
JUDGE, ET AL., ETC.,
Petitioners,

vs.

DON MARSH, ET AL., THE
DAILY GAZETTE CO., ETC., ET AL.,
Respondents.

BRIEF OF THE AMICI CURIAE

INTEREST OF THE AMICI CURIAE

The Juvenile Defender Attorney Program is a non-profit, volunteer attorney group based in Charleston, West Virginia, whose purpose is to protect and promote the legal interests of children in connection with the West Virginia juvenile justice system, and to serve as a resource and training device for attorneys in West Virginia who represent children. This

Defender group also includes West Virginia state legislators, a member of the West Virginia Board of Law Examiners, and a former State Welfare Commissioner. The Juvenile Defender Attorney Program is concerned particularly with protection and expansion of state and federal constitutional rights of children charged by law with juvenile offenses, and also with the rights of those children who have been neglected or abused either by parents or guardians.

Paul Raymond Stone, an attorney who is a member and co-founder of the Juvenile Defender group and a member of the United States Supreme Court Bar, is an assistant professor in the Psychology Department of the West Virginia College of Graduate Studies. He instructs a class entitled "The Legal and Psychological Aspects of Juvenile Delinquency". He has had an interest in juvenile rights for a number of years, and has initiated several programs in furtherance of such rights.

Dr. Paul L. Crawford is the Chairman of the Department of Psychology at West Virginia State College, Institute, West Virginia, and is also adjunct Professor in the Psychiatry Department of

the West Virginia University School of Medicine. He is, and has been since 1969, a consultant in the Division of Forensic Psychiatry, Department of Mental Health and Retardation, State of Ohio. He has been active and instrumental in the field of juvenile rights, as well as in the area of treatment and diagnosis of children with various psychological aberrations. Dr. Crawford is particularly concerned with the adverse, stigmatizing effect which pervasive publication of an accused child's name may have on his prospects for future successful integration into the community and the avoidance of further acts of delinquency. He is also concerned about the effect of such name publication on efforts to rehabilitate the children of our nation.

Written consent from the parties to this case, through their respective attorneys, for the filing of this amici curiae brief is on file with the Clerk of this Court.

ARGUMENT

This case involves the issue, as defined by this Court in its grant of certiorari, whether

or not the freedom of press under the First Amendment to the United States Constitution is infringed by the West Virginia state statute prohibiting the publication of the name of a juvenile defendant in a newspaper.

Your Amici respectfully contend that if respondents prevail in these proceedings, in their attack on West Virginia Code §49-7-3, it would be a substantial set-back of the efforts of the State to foster rehabilitation of juvenile delinquents and to prevent future delinquency of countless thousands of children accused of acts of delinquency, whose charged offenses may not be as serious as that of the juvenile whose case provided the setting for the instant attack on this statute by the newspaper personnel. Publication of a child's name, in the opinion of the experts, is regarded as a traumatic stigma, counterproductive to any effort at rehabilitation in the majority of instances.

The two cases at Bar are different, on the facts, from the situation in Oklahoma Pub. Co. v. District Court In and For Oklahoma County, 97 S.Ct. 1045 (1977), Nebraska Press Assn. v. Stuart, 96

S.Ct. 2791 (1976), and in Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975). In these latter three cases, the information sought to be banned by the state was already in the "public domain" because of the availability of such information from law enforcement or court personnel or by acquiescence of such personnel. In the Oklahoma case, by far the strongest case relied upon by respondents, such confidential or prohibited information, including the identity of the juvenile, was actually made available to the press because of the conduct of the court and its law enforcement personnel. Representatives of the press were permitted to sit in the courtroom during the juvenile hearing, and thus learn the child's identity and other facts; no objection was made by the judge or court personnel to the photographing of such juvenile. In the cases at Bar, there was no such violation, or permitted violation of confidentiality by law enforcement personnel or by the Circuit (Juvenile) Court of Kanawha County or its personnel. The method whereby the respondents learned of the pertinent facts and identity of

the said child here involved had nothing to do with any culpability of the court or its officials, or other public officials. It was due solely to the fortuitous nature of the manner in which the alleged crime occurred in or near public school premises, with many witnesses. Thus, the court, and its personnel and law enforcement officials, unlike the situation in the Oklahoma Publishing Co. case, supra, did not reveal prohibited material to the press. The press later learned the facts, as it may do presently and in the future, from bystanders and other non-public witnesses. It is the understanding of your Amici that the court and law enforcement personnel in the cases at Bar have been most scrupulous in avoiding any revelation to the press or other media as to any of the incidents including identity of the juvenile. Thus, the cases are distinguishable.

If we permit what the press may have learned in this case, simply from the fortuitous circumstances involved, to be further propagated, it will compound the situation. Where previously only a limited segment of the public learned of such

facts, the conduct of the press in publishing this prohibited matter has geometrically disseminated such prohibited disclosure to the readers throughout the extensive circulation area in a manner counterproductive to the rehabilitative purposes of the statute. To allow the press, where the initial revelation has been from non-court or law enforcement sources, to use the convenient excuse that the matter has already become "public knowledge", however limited such public knowledge may be, would be to thwart the salutary purpose of the statute. Such is not the teaching of the Oklahoma case.

Contrary to a prior assertion in one brief in the Oklahoma case, supra, before this Court, the State of West Virginia does, and has for years, limited access to juvenile records. West Virginia Code § 49-5-1 .

The Supreme Court of the United States in In Re Gault, 387 U.S. 1 (1967) states:

> In any event, there is no reason why, consistently with due process, a State cannot continue, if it deems it appropriate, to provide and to improve provision for the confidentiality of

> records of police contacts and court action relating to juveniles. (emphasis supplied) 387 U.S. at 25

The above would appear to provide adequate predicate to prohibit the disclosure, in whatever manner, of the indicia of juvenile proceedings including the identity of the accused.

The doctrine of parens patriae, which provides one of the main bases on which the unique concept of the juvenile court and its procedures were created, is for the primary protection of the children of our State. To use the vernacular, such doctrine provides the warrant for an entirely different "ball game"—i.e., juvenile proceedings and their safeguards vis-a-vis the procedures applicable in adult court. The right to a public trial is not an inherent right in the typical juvenile court statute. To now permit, by appellate court action, the publication of a child's name, when coupled together with all the other permissably reported factual material in connection with a juvenile case, would be to expose the child to public view in the same manner as now obtains in connection with adult cases. The result may well be to defeat the beneficent,

rehabilitative purposes for which the juvenile court was created in the first instance. Indeed, it has been held by the United States Supreme Court,[1] without doubt on the analogy just made, that there is no inherent constitutional right to a jury trial since, among other things, such could result in public exposure, at least to a limited degree. Although West Virginia accords children such right, it should be emphasized that it is their right, not that of the newspapers, to so be subjected to this limited public exposure. And it is the understanding of your Amici that jury trials in this State in juvenile cases are relatively rare.

If petitioners prevail in this case, moreover, the expungement provisions of the West Virginia Juvenile Code will be rendered virtually meaningless. Under the provisions of this law, juvenile records are expunged by operation of law.[2] If the identity of the juvenile is

---

[1] McKeiver v. Pennsylvania, 403 U.S. 528 (1971)

[2] West Virginia Code § 49-5-17 (Michie 1978)

permitted to be connected with the facts of his offense and printed in a newspaper, such expungement provisions will be, in large measure, rendered nugatory and illusory.

One respondent criticism is the prerogative of the judge, by written court order, to permit publication of a juvenile's name. No doubt such was primarily intended for use in cases of repeated offenders where protection against public stigmatizing may have become meaningless. Moreover, in rare instances, there may be some deterrent effect on a juvenile who is a repeat offender and knows that his name is subject to publication at the instance of the judge because of repeated juvenile court exposure. A judge is the arbiter of what is most promotive of ultimate rehabilitation; thus, there is a rational basis, even a compelling state interest, in making this "prior restraint" complained of by respondents subject to such possible exception.

The Congress of the United States, through Congressional Committee reports, as well as by statute[3], now has adopted a position identical to

---

[3] 18 U.S.C. 5038(d)

that underlying the disputed state statute for juveniles whose cases are not triable in adult court. Under then existing West Virginia law, the child whose case underlies this court action of the respondents cannot be subject to trial in adult court, it is noted. There are many cases of juvenile delinquency which involve co-extensive violations of both state and federal statutes (e.g., drug offenses, auto theft and subsequent interstate transportation thereof, etc.). The federal court will not take jurisdiction under its statutes, if the state court does so; hence, this is a matter fraught with considerable fortuity. A juvenile really does not know, in connection with many types of offense, whether a state court or a federal court will ultimately take jurisdiction. The federal statute, Title 18 U.S.C. § 5038(d), should be assigned the utmost importance in the ultimate resolution of this case. If this Court upholds the West Virginia Supreme Court in the case at Bar, this federal statute will undoubtedly later be stricken down on First Amendment grounds. Is this Court now prepared to

effect such a drastic result?

Additionally, U.S. Code Congressional and Administrative News, 1974, Vol. 3, page 5288, recites pertinent legislative history underlying the various federal juvenile delinquency statutes, including P.L. 93-415; the Congress notes that any adverse "labeling" is counterproductive in the efforts at combating juvenile delinquency. Therein it is stated:

> In testimony before the Subcommittee, the President of the National Association of State Juvenile Delinquency Program Administrators on February 22, 1973, said in part:
>
> * * *
>
> "The structural and procedural system has two built-in patterns that tend to be self-defeating. First, the youth in need or trouble is identified and labeled. As he is labeled, certain sanctions are imposed and certain critical stances assumed. The sanctions and the stance tend to convince the individual that he is deviant, that he is different, and to confirm any doubts he may have had about his capacity to function in the manner of the majority.
>
> * * *
>
> Our objective must be, therefore, to minimize the youngster's penetration into all negative

labeling, institutional processes."

The revelation of a child's name, which the respondents seek and which is contrary to the policy of the West Virginia legislature and to federal policy, will certainly result in such counterproductive, adverse labeling.

Additionally, there is now, and has been for some years, a federal impetus and concomitant federal funding availability for community-based juvenile treatment centers. If a child's name is already made pervasively known throughout the community, by extensive newspaper publication thereof, such community efforts and federal subsidies will be largely thwarted, insofar as a meaningful rehabilitative effect in many cases is concerned.

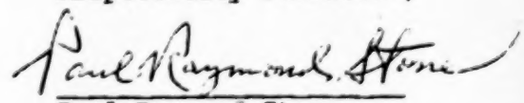
Irrespective of the claims which respondents make under the federal Constitution as to due process and freedom of the press, it is noted that a cardinal principle of constitutional law exists for the deprivation of a constitutional right provided that there is a "compelling state interest" therefor. See Sherbert v. Verner, 374 U.S. 398 (1963) in which the United States

Supreme Court enunciated, and more comprehensively articulated, this doctrine. It is respectfully submitted that there is a "compelling state interest" in rehabilitating juvenile offenders, and preventing future criminality, which is served by the statute herein assailed, which--aside from the other reasons for holding it constitutional and valid (as hereinbefore enumerated)--warrants upholding on this "compelling state interest" principle alone.

CONCLUSION

For the reasons stated hereinbefore, it is urged that this Court in these cases reverse the decision below of the West Virginia Supreme Court.

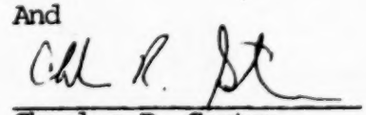
Respectfully submitted,



Paul Raymond Stone
Pro Se

Date: Dec. 23, 1978

And



Charles R. Garten

Counsel for
Amici Curiae
1116-B Kanawha Blvd., E.
Charleston, WV 25301

CERTIFICATE OF SERVICE

I, Paul Raymond Stone, a member of the Bar of The Supreme Court of the United States, on behalf of the Amici Curiae, hereby certify that, on the 23rd day of December, 1978, I served three copies of the foregoing Brief Amici Curiae on each of the respondents by depositing same in a United States mailbox, with postage prepaid, addressed to counsel of record for the respondents, Rudolph L. DiTrapano, Attorney at Law, DiTrapano, Mitchell, Lawson and Field, 604 Virginia Street, East, Charleston, West Virginia 25301 and F. Paul Chambers, Attorney at Law, Jackson, Kelly, Holt & O'Farrell, 1500 One Valley Square, P.O. Box 553, Charleston, West Virginia 25322; and the Hon. Cletus B. Hanley, Counsel for Petitioners, State Capitol, Charleston, WV 20305. I further certify that all parties required to be served have been served.

Paul Raymond Stone

Paul Raymond Stone
1116-B Kanawha Boulevard, East
Charleston, WV 25301